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Abstract

The Islamic Finance industry grew from a socio-economic movement to a global industry. The enabling mechanism was a rather legalistic interpretative approach towards Islamic prohibitions such as riba, maysir and gharar. The emergence of an Islamic kind of insurance, i.e. takaful, shows how this process was driven by socio-economic and political factors. Today, one of the central claims often raised in discussions around Islamic Finance in general and takaful in particular is that of standardization. In order to grow and further develop, the claim goes, Islamic Finance requires standardized legal frameworks and products. Although such standardization appears to be difficult given the diverse and pluralistic nature of Islamic law and its interpretation, it also appears to make sense, at least with a view to insurance, an industry particularly dependent on scale. Examining this claim ultimately requires an economic analysis. Assuming standardization would indeed further the growth of the takaful industry, the (legal and political) question arises, how, i.e. through which mechanisms, such standardization is currently supported. In conventional finance, standardization is often achieved through soft law norms produced by (private or public) international regulatory bodies. To examine whether similar processes can be found in Islamic finance, this article applies a framework by Charles Brummer, which looks at the central actors and main coercive forces of soft law norms, to the takaful industry.

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I. Introduction

The Islamic Finance industry grew from a socio-economic movement to a global industry. Such development was possible on the basis of a rather legalistic, formal interpretative approach towards Islamic prohibitions such as *riba*, *maysir* and *gharar*. The emergence of an Islamic kind of insurance, i.e. *takaful*, demonstrates this process and also shows, how it was driven by socio-economic and political factors. Going forward, Islamic finance could continue to grow in scale and geography in its current forms, or it could gravitate back to its rather socio-economic beginnings, concentrating more on substance than form. This article first explains how the current forms of *takaful* have been developed. Part one describes how Islamic Finance developed from its socio-economic beginnings to its current forms. The second part of the paper then explores the prospects for future development. For that purpose part two explores the institutional framework, asking how AAOIFI's standards may be seen, and are effective, as soft-law tools for international harmonization and further growth. To answer this question, part two applies Charles Brummer's framework, which looks at the central actors and main coercive forces of soft law norms, to the Islamic Finance landscape with a view to the *takaful* industry.

II. The Development of Islamic Finance

With the introduction of European inspired legal frameworks came the demise of the role traditional Islamic institutions such as the *Shari'a* courts and the *Mujtahids* had played before.[1] Nonetheless, Islamic law still played an important role in that it was taken seriously as a moral guideline for individuals.[2] The imposition of secular law on the largely Muslim societies of the Arab states inspired political movements, often concerned with social and economic progress based on traditional, i.e. Islamic values.[3] Among the first experiments aiming at empowerment and inclusion of the poor by providing financial services compliant with Islamic law was the Egyptian bank Mit Ghamr, which operated without charging any interest, profiting only from engaging in trade and business directly or in partnership with others.[4] Such socio-economic approach[5] based on Islamic values, although not openly marketed as such, created tensions with the government's policies of largely secular modernization,[6] and ultimately, Mit Ghamr was shut down by the Egyptian government.[7]

1 HALLAQ WAEL, *Shari'a: Theory, Practice, Transformations*, Cambridge 2009, at 445; HOURANI ALBERT, *Arabic Thought in the Liberal Age*, Oxford 1970, at 350.

2 BÄLZ KILIAN RUDOLF, *Versicherungsvertragsrecht in den Arabischen Staaten*, Karlsruhe 1997, at 39. Officially, Islamic law was marginalized to the sphere of personal status law, and even there secularization took place (HOURANI, *supra* n. 1).

3 HEGAZY WALID, *Contemporary Islamic Finance: From Socioeconomic Idealism to Pure Legalism*, Chicago Journal of International Law, Vol. 7 (2007), No. 2, Article 13, at 583.

4 WARDE IBRAHIM, *Islamic Finance in the Global Economy*, Edinburgh 2010, at 73-74.

5 The term socio-economic approach is borrowed from HEGAZY (see HEGAZY, *supra* n. 3, at 582).

6 See for example BÄLZ, *supra* n. 2, at 40.

7 HEGAZY, *supra* n. 3, at 589; Warde mentions other accounts according to which Mit Ghamr was closed due to severe financial problems (see WARDE, supra n. 4, at 74).

With exploding oil revenues the demand side of Islamic finance changed drastically by the 1970s.[8] This and the rise of political Islam led to an increased political interest in Islamic finance.[9] By that time the academic debate had already created the theoretical foundation for what would ultimately become today's Islamic finance industry. A legalistic approach, as Hegazy describes it, towards Islamic banking rather than the original socio-economic approach was most prominently proposed by Muhammad Baqir as-Sadr.[10] As-Sadr understood Islamic economics as a dogma (not a science),[11] the essence of which must be discovered starting from the law, i.e. the rules derived from the four legal sources of Islamic law[12] – not from observations of reality. Yet, while As-Sadr built his propositions for an Islamic kind of banking acknowledging the proscriptive nature of the dogma, he acknowledged the absence of a general theory of economics (or even banking) in Islamic law, and also a certain degree of contextual realism as he argued that in order to succeed in an environment where conventional competition exists, Islamic banks had to offer similar economic incentives for customers, such as guaranteed deposits and a fixed rate of return on deposits.[13] Simplifying his model, an Islamic bank – like a conventional bank – serves as an intermediary for capital providers and those seeking capital, albeit – different from conventional banks – not earning profits from an interest differential, but in exchange for its intermediation service only (a fee consisting of fixed and variable components).[14] Without going into detail at this point, As-Sadr managed to build in features such as guaranteed deposits and a *de facto* fixed return on deposits by considering the applicable Islamic contracts (with the rights and obligations thereunder) governing the relations between the three parties and then structuring the transaction in a way that formally avoids triggering central prohibitions under Islamic law.

Based on this formal premise Islamic Finance grew rapidly, regional growth engines being Kuala Lumpur on the one hand and the Gulf countries on the other.[15]

For the purposes of this short paper we may describe the development from socio-economic idealism to legalism as move from substance to form, a largely uncoordinated process which can be illustrated using insurance as an example.

Traditionally, insurance had been widely considered impermissible under Islamic law. The prohibition of insurance under Islamic law had long been controversial when around 1960 Egypt was going through a process of modernization and nationalization,[16] and

[8] HEGAZY, *supra* n. 3, at 602; Warde describes this phase as "The First Aggiornamento" of Islamic finance (see WARDE, supra n. 4, at 74 to 78).

[9] HEGAZY, *supra* n. 3, at 589.

[10] HEGAZY, *supra* n. 3, at 583.

[11] MALLAT CHIBLI, *The renewal of Islamic law,* 122, 123 referencing As-Sadr; see also BÄLZ, *supra* n. 2, at 56 referencing Muhammad Abu Zahra.

[12] MALLAT, *supra* n. 11.

[13] HEGAZY, *supra* n. 3, at 593; MALLAT, *supra* n. 11, 166-167.

[14] MALLAT, *supra* n. 11, at 169-171. The moral dimension becomes apparent as As-Sadr stresses the bank would need to deal with honest and capable entrepreneurs (MALLAT, *supra* n. 11, at 171).

[15] The Malaysian model and the Gulf model differ as the Malaysian model follows the *Shafi* school while the Gulf model follows the *Hanbali* school. For a description on the development of Islamic finance in Malaysia see WARDE, *supra* n. 4, at 123-128. This paper focuses on the Gulf region.

[16] BÄLZ, *supra* n. 2, at 40.

different views surfaced, ranging from liberal – justifying conventional insurance[17] Islamically – to conservative – prohibiting insurance generally. The nationalization extended to foreign insurers, and Egypt's European inspired civil law provided the legal basis for this business allowing conventional insurance.[18] Egypt's leading jurists sought to reconcile the new Egyptian civil law with the countries long Islamic tradition.[19] To facilitate such reconciliation they brought about remarkable reforms resulting in a systemic shift towards abstraction as opposed to a traditional *numerus clausus* of contracts.[20] The radical shift those jurists now (successfully) proposed towards contractual freedom, only limited by certain Islamic legal principles instead of a formal *numerus clausus* of contracts, was accompanied by a change of the mode of the legal debate.[21] Traditionally, questions of Islamic law had been answered through *fatawa*, which were non-binding and employed on a case-by-case basis.[22] Now conferences were held, where Islamic jurists not only searched for general solutions, but also began to look more closely at the actual insurance techniques and economics.[23] With the momentum of the oil boom and political Islam's rise during the 1970s an Islamic form of insurance evolved based on the formal approach considering the applicable Islamic contracts governing the relations among the insured as well as between them and the insurer, and structuring the transaction in a way that avoids triggering central prohibitions under Islamic law.

III. Prohibitions of Islamic Law against Conventional Insurance

The shift from a *numerus clausus* of contracts towards abstraction opened the door for a substance oriented discussion focusing on the relevant Islamic prohibitions of gambling (*maysir*), excessive uncertainty (*gharar*) and unlawful gain (*riba*).

1. Maysir and Gharar

In various instances the Quran prohibits *maysir*.[24] *Maysir* may be understood as games of chance or pure speculation in which final sales of wholly unknown values are made.[25]

[17] For the purposes of this article, conventional insurance comprises proprietary and mutual insurance. Whereas in proprietary insurance the risk of the insured is transferred from the insured to the insurer in exchange for premiums, mutual insurance does not involve such risk transfer, but instead a risk sharing between the insured. Both forms are seen as impermissible under Islamic law.

[18] The insurance contract was regulated for the first time in Articles 747 to 771 of Egypt's civil code of 1948 (for details please see BÄLZ, *supra* n. 2, at 72-82).

[19] BÄLZ, *supra* n. 2, at 55.

[20] BÄLZ, *supra* n. 2, at 46.

[21] BÄLZ, *supra* n. 2, at 43.

[22] BÄLZ, *supra* n. 2, at 28. The *fatwa* was provided by a *mufti* on demand. According to Schacht the *mufti's* "authority was based on his reputation as a scholar, his opinion had no official sanction, and a layman could resort to any scholar he knew and in whom he had confidence" (SCHACHT JOSEF, *An Introduction to Islamic Law*, Oxford 1964, at 74).

[23] BÄLZ, *supra* n. 2, at 44.

[24] "O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone altars [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful" (Quran 5:90), or "Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?" (Quran 5:91).

Often *maysir* is seen as the broader concept from which *gharar* is derived.[26] *Gharar* is widely understood as uncertainty, risk or speculation.[27] It is rooted in various *hadiths* around which legal doctrine primarily evolved.[28] Such *hadiths* stipulate for example

"*do not buy fish in the sea, for it is gharar*", or "*the Prophet forbade sale of what is in the wombs, sale of the contents of the udders, sale of a slave when he is a runaway, ... and sale of the stroke of the diver*", or "*whoever buys foodstuffs, let him not sell them until he has possession of them*", or "*He who purchases food shall not sell it until he weighs it*".[29]

Those *hadiths* all refer to sales contracts. From here it is derived that *gharar* applies only to bilateral contracts of exchange. All of these *hadiths* prohibit selling or buying of something unknown – either regarding existence or quantity. What constitutes *gharar* beyond the scenarios mentioned in the *hadiths* is controversial.

Vogel classified the *gharar-hadiths* according to how central *gharar* was to the transaction.[30] The resulting spectrum ranges from "Pure Speculation" on one end of the spectrum to "Uncertain Outcome" to "The Unknown Future Benefit" to "Inexactitude".[31] The *hadiths* mentioned above could be understood in a way that they only bar risks affecting the existence of the object as to which the parties transact, rather than the risk regarding the price. Such risk can arise (1) because of the parties' lack of knowledge about that object, (2) because the object does not now exist, or (3) because the object evades the parties' control.[32] Vogel recommends scholars might use one of these three characteristics to detect *gharar* in transactions.[33]

All of those three elements are present in conventional insurance: (1) the parties lack knowledge about the object of the insurance transaction, which is the payment upon occurrence of the insured event (i.e. the performance of the insurer), since such payment is uncertain at the time of the conclusion of the contract; (2) at the time of the conclusion of the contract the object does not yet exist, because such payment is subject to occurrence of the insured event; (3) finally, the payout being conditional upon the occurrence of an uncertain event, is beyond the parties' control. In conclusion, conventional insurance is prohibited under Islamic law due to its conflict with *gharar* and *maysir*.

[25] VOGEL FRANK/HAYES SAMUEL, *Islamic Law and Finance: Religion, Risk, and Return,* Boston 1998, at 16, 88.

[26] WARDE, *supra* n. 4, at 58; EL-GAMAL MAHMOUD, *Islamic Finance: Law, Economics, and Practice,* Cambridge 2006, at 58; SCHACHT, *supra* n. 22, at 146; BALALA MAHA HANAAN, *Islamic Finance and Law: Theory and Practice in a Globalized World,* Vol. 5 (2011), 36.

[27] WARDE, *supra* n. 4, at 56.

[28] NETHERCROTT CRAIG/EISENBERG DAVID, *Islamic Finance: Law and Practice,* Oxford 2012, at 45.

[29] VOGEL/HAYES, *supra* n. 25, at 16, 88.

[30] VOGEL/HAYES, *supra* n. 25, at 88-91.

[31] VOGEL/HAYES, *supra* n. 25, at 16, 88.

[32] VOGEL/HAYES, *supra* n. 25, at 90.

[33] VOGEL/HAYES, *supra* n. 25, at 90.

2. Riba

The prohibition of *riba* is mentioned several times in the Quran, such as

"*Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein*."[34]

As with *gharar* the Quran does not specify what *riba* actually is. However, the *hadiths* provide some specification for sales and loan contracts. With respect to sales contracts a famous hadith states "*Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, equal for equal, hand to hand. If these types differ, then sell them as you wish, if it is hand to hand*"[35]. With regard to loan contracts a famous *hadith* states "*Every loan that attracts a benefit is riba*"[36].

The majority of scholars understand *riba* as including all of the mentioned forms of *riba*, in the words of Warde, as any unlawful gain derived from the quantitative inequality of the countervalues.[37] With respect to conventional insurance *riba* leads primarily to restrictions regarding the insurer's investment business. To avoid *riba* insurance companies have to refrain from investments in interest bearing instruments or prohibited sectors (e.g. alcohol, pornography, weapons, pork). Shares in companies that pay interest on their debt or generate profits from prohibited (*haram*) industries are usually accepted as long as certain thresholds are not exceeded. For example, companies with debt of 33 % or more of twelve-month average market capitalization could be screened out.[38] Where income nevertheless stems from illicit activities, it must be purified, i.e. given to charity.[39] On the product side late payments of premiums may not be sanctioned in the form of interest.[40]

3. Earlier Alternative Views

The central prohibitions of *maysir*, *gharar* and *riba* had been discussed in length, especially during the time preceding the formalistic paradigm. This might be attributable to the inherent diversity of opinion in matters of Islamic law, but also the economic benefits of a functioning insurance sector for a country, as developmental and modernization efforts were a political priority at that time. The following views demonstrate the range of the discussion around the permissibility of conventional insurance against the background of the aforementioned prohibitions.

[34] Quran 2:275.

[35] Muslim, according to Vogel and Hayes (VOGEL/HAYES, *supra* n. 25, at 73).

[36] According to Vogel and Hayes this *hadith* is related by the most respected scholars only to the authority of Companions, not the Prophet himself (VOGEL/HAYES, *supra* n. 25, at 73).

[37] WARDE, *supra* n. 4, at 58.

[38] WARDE, *supra* n. 4, at 152.

[39] WARDE, *supra* n. 4, at 152; see also IFSB Standard 6 – Guiding Principles on Governance for Islamic Collective Investment Schemes, Nr. 11, 41, p. 5, 14, available at: http://www.ifsb.org/standard/ifsb6.pdf, last accessed 29 November 2015.

[40] WARDE, *supra* n. 4, at 147.

Al-Zarqa argued that given the law of large numbers the degree of uncertainty is very low, and therefore – viewed in the aggregate and as an institutional form – insurance could not constitute *gharar*.[41] The performance owed by the insurer, he argued, was not the payout upon occurrence of the insured invent, but the guarantee granted.[42] Such guarantee exists upon contracting, and hence there is no uncertainty beyond the ordinary business risk.[43] Thus, according to al-Zarqa insurance contracts are permissible under Islamic law.[44]

Sanhouri stressed the difference between minor *gharar* (*gharar yasir*) and major *gharar (gharar khatir)*, only the latter of which leads to the concerned contract's voidance.[45] He argued that the determination of *gharar* being major or minor depends on the circumstances of the time at which such determination is made.[46] In modern times the degree of uncertainty involved in insurance contracts is seen as minor by Sanhouri.[47] According to Bälz, Sanhouri arrives at this finding through the application of the concept of (public) need (*haja*).[48] According to Sanhouri (conventional) insurance would be permissible under Islamic law.

With respect to riba, some argue that only real interest – as opposed to nominal interest – qualifies as *riba*.[49] Or, only *riba al-jahiliya*, i.e. a pre-Islamic practice in which the lender gives the borrower upon maturity the choice between settling the debt or doubling it,[50] is subject to the prohibition, whereas other forms of *riba* (*riba al fadl*, and *riba al nasi'a*) may be overcome in cases of need (*haja*).[51]

As every set of abstract rules knows exceptions for specific cases, Islamic law does so, too, for example necessity (*darura*) and public need (*haja*).[52] Applying them to allow conventional insurance had been discussed, especially in the 1960s, i.e. at a time of socio-economic focus and prior to the widespread adoption of the legalistic approach. However, this endeavor was never widely accepted.[53] Nonetheless, those substance-oriented

[41] AL-ZARQA MUSTAFA AHMAD, *Nizam al-ta'min,* as referenced Mustafa Ahmad al-Zarqa, Nizam al-ta'min (Damascus: Matba'at Jami'at Dimashq, 1962) as referenced in VOGEL/HAYES, *supra* n. 25, at 151.; BÄLZ, *supra* n. 2, at 50, 51.

[42] BÄLZ, *supra* n. 2, at 51.

[43] BÄLZ, *supra* n. 2, at 51.

[44] BÄLZ, supra n. 2, at 50; VOGEL/HAYES, *supra* n. 25, at 151.

[45] BÄLZ, *supra* n. 2, at 51.

[46] BÄLZ, *supra* n. 2, at 51.

[47] BÄLZ, *supra* n. 2, at 51.

[48] Bälz differentiates between *darura* in a narrow sense, and *darura* in a broader sense (*haja*). According to BÄLZ *darura* in a narrow sense requires a state of emergency and allows the individual under certain circumstances to breach Islamic prohibitions, whereas *haja* considers general social and economic factors (BÄLZ, *supra* n. 2, footnote 202). This paper uses the terms *darura* and *haja*, both of which will be introduced below.

[49] BÄLZ, *supra* n. 2, 53.

[50] BÄLZ, *supra* n. 2, 53.

[51] BÄLZ, *supra* n. 2, 53 referencing Sanhouri.

[52] Technically, *darura* and *haja* are sometimes considered in interpreting a rule, sometimes they are seen as exceptions from a rule. There are various other conduits of flexibility in Islamic law, e.g. *urf* or *maqasid* (for a good overview see: KAMALI MOHAMMAD HASHIM, *Istihsan and the Renewal of Islamic Law,* Islamic Studies 43, No. 4 (2004), available at: http://www.iais.org.my/e/index.php/publications-sp-1447159098/articles/item/16-istihsan-and-the-renewal-of-islamic-law.html, last accessed 29 November 2015.

[53] Nonetheless, *darura* and *haja* are used to allow conventional insurance where an Islamic alternative is not available, for example in non-muslim countries or with respect to reinsurance (according to Hodgins and Jaffer the permissibility of conventional reinsurance for *takaful* providers is controversial, see NETHERCROTT/EISENBERG, *supra* n. 28, at 292.

concepts illustrate the diversity of opinion in Islamic law and contrast with the current models of *takaful*, the religious justification of which relies on a rather formal approach.

Darura and *haja* are not defined in the Quran. *Darura* is based on specific exceptions mentioned in the Quran, most of which relate to forbidden food and allow its consumption under certain circumstances.[54] Numerous *hadiths* stipulate such exceptions under specific circumstances. *Haja* constitutes a lesser degree of necessity and differs with respect to its prerequisites and effects.[55]

Both types of exceptions require – cumulatively – some specifics and that no Islamic alternative (which would provide the same benefit as relying upon the exception) is available. While Quranic passages and *hadiths* mention cases involving the fear of death,[56] modernists argue a genuine fear of injury to one of the five fundamental values (life, religion, property, reason, and offspring) suffices.[57] Such fear, some argue broadening *darura's* scope of application, might similarly be caused by compulsion, aggression, or change in circumstances in contracts.[58]

Public *haja* may be applied to remove hardship and difficulty.[59] *Haja* was specifically employed to sanction certain transactions in the economic life of the people.[60] To differentiate between cases of *darura* and *haja* some distinguish between preventive prohibitions (when *haja* may apply), and definitive prohibitions (when only *darura* may apply).[61] According to this theory *haja* refers to what is prohibited as a preventive measure (*sadd al-dhari'a*), but may become permissible, whereas *darura* relates to what is prohibited with definite purpose.[62] In other words, according to this logic, the determination of whether a prohibition is preventive or definitive depends on the exposure of the protected value vis-à-vis the behavior addressed by the prohibition. If the behavior addressed by the

[54] Quran 2:173; 5:3; 4:119; 6:145.

[55] MUSLEHUDDIN MOHAMMAD, *Islamic Jurisprudence and the Rule of Necessity and Need,* Islamabad 1975, 61-63. Muslehuddin refrains from clearly distinguishing, while Al-Mutairi does (AL-MUTAIRI MANSOUR, *Necessity in Islamic Law,* Edinburgh 1997, 16).

[56] Al-Mutairi refers to Abu Bakr al-Jassas from the *Hanafi* school who defined necessity as follows "The meaning of necessity, here, is the fear of injury (damn to one's life or some of one's organs) if one refrained from eating" (AL-MUTAIRI, *supra* n. 55, at 11). Zarkashi, al-Siyuti and al-Hamawi al-Hanafi defined necessity as follows: "It is a situation in which one reaches a limit where if one does not take a prohibited thing, one will die or be about to die"(AL-MUTAIRI, *supra* n. 55, at 11) Al-Dardir from the *Maliki* school said: "Necessity is preserving lives from being lost or from being greatly injured" (AL-MUTAIRI, *supra* n. 55, at 11) Ibn Qudamah has given a similar definition: "Permitting necessity is the state in which one fears losing one's life if one abstained from eating". Yet, when those scholars explained their "definitions" they went beyond those subject matters, touching upon very different ones, for example financial matters or the preservation of property (AL-MUTAIRI, *supra* n. 55, at 11); AL-MUTAIRI puts it as an open question why the classical definitions of *darura* were so narrow compared to the wider usage of the concept. Mawil Izzi Dien offers an explanation: he writes that the methodology of definition by example was common among Arabic writers in general and not only among legal writers He also mentions the metaphorical nature of the Arabic language and culture, but then states "this methodology seems to be deliberate on occasions, with a view to avoiding the hypothetical definition which could deviate from the meaning of the text in order to serve non-existent cases" (see AL-DIN MU'IL YUSUF 'IZZ, *Islamic Law: From Historical Foundations to Contemporary Practice,* Notre Dame 2004, at 83.

[57] AL-MUTAIRI, *supra* n. 55, at 15.

[58] AL-MUTAIRI, *supra* n. 55, at 15.

[59] AL-MUTAIRI, *supra* n. 55, at 17.

[60] MUSLEHUDDIN, *supra* n. 55, at 62.

[61] MUSLEHUDDIN MOHAMMAD, *Insurance and Islamic Law,* Lahore 1969, 102-103.

[62] ZAKARIYA LUQMAN, *Legal Maxims and Islamic Financial Transactions: A Case Study of Mortgage Contracts and the Dilemma for Muslims in Britain,* Arab Law Quarterly 26, No. 3 (2012), at 277.

prohibition does not by itself constitute an injury of the protected value, but may be expected to lead – in connection with a typical development of events – to such injury in the future, then such prohibition is of preventive nature. In such cases *haja* may apply.

The prohibition of *maysir* is found next to the prohibition of alcohol in the same verses of the Quran, and protects religion indirectly by addressing a behavior that might lead to such injury in the future (like intoxication, gambling leads to addiction and may keep the believers from praying). Thus, the prohibition of *maysir* can be seen as a preventive prohibition and *haja* applies.

Public *haja* is present where a whole community faces hardship due to certain social benefits being neglected. A functioning insurance market generally represents social benefits.[63] Neglecting such benefits, one might argue, could be seen as hardship for the community.

4. Summary

Conventional insurance conflicts with the prohibitions of *maysir* and *gharar*, as well as *riba* and is, therefore, prohibited. *Darura* and *haja* are conduits of flexibility in Islamic law, the application of which requires a substance-oriented approach to distinguish the permissible from the prohibited. Yet, *takaful* was not developed on that basis, it was part of the general development of Islamic finance based on a positivist, i.e. legalistic approach.

IV. The Emergence of Takaful

Although there was no Islamic equivalent of conventional insurance, some scholars argue that there had been certain precursors in pre-Islamic times that later were accepted by the Prophet.[64] According to Billah it was an ancient practice among the tribal Arabs that upon the killing of a member of the tribe, the tribe responsible for such killing had to pay blood money to the heirs of the killed.[65] The name for this practice was *'aqilah*, a reference to the heirs who would receive the blood money.[66]

The religious foundation for an Islamic form of insurance, *takaful*, was provided by various *fatawa*. For example, a *fatwa* was issued in 1977 by the Secretariat General of the Supreme Council of the Senior Ulama of the Kingdom of Saudi Arabia.[67]

[63] The positive effects of wide-spread insurance coverage on economic development has been studied extensively and is recognized widely (see for example FEYEN ERIK/LESTER RODNEY/ROCHA ROBERTO, *What Drives the Development of the Insurance Sector? An Empirical Analysis Based on a Panel of Developed and Developing Countries,* Journal of Financial Perspectives 1, No. 1 (2013), available at: http://wwwwds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2011/02/23/000158349_20110223115546/Rendered/PDF/WPS5572.pdf, last accessed 29 November 2015.

[64] BILLAH MOHD. MA'SUM, *Applied Takaful and Modern Insurance: Law and Practice,* Petaling Jaya, Selangor, Malaysia 2007, at 5.

[65] BILLAH, *supra* n. 64, at 5; AYUB MUHAMMAD, *Understanding Islamic Finance,* Hoboken 2007, at 420.

[66] MUSLEHUDDIN, *supra* n. 55, at 62; AYUB, *supra* n. 65, at 421.

[67] See Appendix 1.

> "1st: Cooperative insurance is a form of contract of donation, which means the distribution of risks and anticipation of sharing the responsibility in case of disasters. This is based on the fact that people contribute in cash to compensate those who sustain damage. In doing so, the cooperative insurance group does not aim to trade in, or make a profit from, the money of others. Its members only mean to distribute the risks among themselves and to cooperate in bearing the damage.
>
> 2nd: Cooperative insurance is free of usury in its two forms, *riba al fadul* and *riba al-nisa*. The contributors' contracts are not usurious, and they do not exploit the collected money in usurious transactions.
>
> 3rd: The fact that the contributors in cooperative insurance ignore to define the benefit they gain does not harm, because they are donors. Therefore, there are no risks or gambling, and it is different from commercial insurance which is a contract of commercial financial transactions."[68]

Another fatwa was issued by the Islamic Fiqh Academy in 1985:[69]

> "First: The commercial insurance contract with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major elements of deceit, which void the contract and, therefore is prohibited (*haram*) according to *Shari'a*.
>
> Second: The alternative contract, which conforms, to the principles of Islamic dealings is the contract of cooperative insurance, which is found on the basis of charity and cooperation. Similarly, is the case of reinsurance based on the principle of cooperative insurance".[70]

Those *fatawa* spell out very clearly the key principles of *takaful*, i.e. the principle of donation-based contributions (*tabarru*), mutual ownership and assistance (*ta'awun*), and the prohibition of *riba*. Where *tabarru* and *ta'awun* are preserved, the prohibitions of *maysir* and *gharar* do not apply.[71]

Tabarru describes a unilateral declaration of intent, whereby the donor provides a benefit to the recipient without seeking any specific consideration in return.[72] Since the prohibition of *gharar* is applicable only to bilateral contracts, structuring premium payments as unilateral donations, i.e. *tabarru*, circumvents the prohibition of *gharar*.

[68] See Appendix 1.

[69] See Appendix 2.

[70] See Appendix 2.

[71] NETHERCROTT/EISENBERG, *supra* n. 28, at 279.

[72] IFSB, Guiding Principles of Governance for Takaful (Islamic Insurance) Undertakings, December 2009, 5, available at: http://www.ifsb.org/standard/ED8Takaful%20Governance%20Standard.pdf, last accessed 29 November 2015. For a more detailed description of different views on what constitutes *tabarru'*, see NOORDIN KAMARUZAM, The Implementation of *Tabarru'* and *Ta'awun* Contracts in the Takaful Models", available at: http://repository.um.edu.my/36472/1/Islamic_ch07_091-112.pdf, last accessed 29 November 2015. According to Noordin, *tabarru'* is just a generic term under which various specific contracts may be subsumed. Among those specific contracts, Noordin argues in favor of the *hiba bi shart al-'iwad*, which – according to him – allows for a conditional donation and makes enforceable claims to the risk fund as well as a distribution of the underwriting surplus to the policyholder permissible (see NOORDIN, at 8, 20).

While *tabarru* governs how the *takaful* fund generates its funds, *ta'awun* governs how the payouts are made upon occurrence of the insured events. Under the concept of *ta'awun* the policyholders agree to compensate each other mutually for losses arising from the specified risks.[73] As owners of the *takaful* fund the policyholders are generally entitled to their share in the surplus of the *takaful* fund. To clarify this the mentioned fatwa from 1977 states that the cooperative insurance group does not make a profit from the money of others (meaning that there is no difference between the providers and the (ultimate)[74] owners of the funds). Such surplus exists where an underwriting surplus and profits from investment activities outweigh all payouts and costs of the *takaful* fund.

Against the background of the two conventional forms of insurance, namely mutual insurance, which offers risk sharing (i.e. spreading the burden of loss between all participants involved[75]), whereas proprietary insurance offers risk transferring (risk is transferred contractually to a counterparty rather than shared among participants), *takaful* developed as a third form of insurance.

The relation between the *takaful* fund and the *takaful* operator depends on the specific *takaful* model. The most common *takaful* models are the *wakala* model, the *mudaraba* model, a combination of both (the *wakala-mudaraba* model).[76]

1. Wakala Model

In the *wakala* model the *takaful* operator acts as agent ("*wakil*") for the *takaful* fund. The *wakil* is remunerated either on the basis of a fixed management fee or a fee calculated as a percentage of either the assets under management[77] or the volume of contributions (e.g. 30%[78]).[79] The fee is fixed annually and in advance.[80] Depending on performance a part of the underwriting surplus may be distributed to the operator as well.[81] This is controversial, since the surplus should remain with the policyholders.[82]

2. Mudaraba Model

In the mudaraba model the takaful operator acts as mudarib, i.e. as entrepreneur, while the participants act as rab al mal, i.e. capital provider. The takaful operator is remunerated only with his share in the investment profits (participation in the underwriting surplus is

[73] IFSB, Guiding Principles on Governance of Takaful (Islamic Insurance) Undertakings, available at: http://www.ifsb.org/standard/ED8Takaful%20Governance%20Standard.pdf, last accessed 29 November 2015.

[74] Of course, the policyholders are not owners of the funds, but owners of shares.

[75] The risk remains to some extent with the insured, who is bearing his share of it as a part of the collective.

[76] NETHERCROTT/EISENBERG, *supra* n. 28, at 287.

[77] NETHERCROTT/EISENBERG, *supra* n. 28 at 283.

[78] AYUB, *supra* n. 65, at 424.

[79] ARCHER SIMON/KARIM RIFAAT AHMAD ABDEL/NIENHAUS VOLKER, *Takaful Islamic Insurance: Concepts and Regulatory Issues,* Singapore 2009, at 13.

[80] AYUB, *supra* n. 65, at 424.

[81] AYUB, *supra* n. 65, at 424.

[82] AYUB, *supra* n. 65, at 426. For further criticism of performance related *wakala* fees see: ARCHER/KARIM/ NIENHAUS, *supra* n. 79, at 14.

widely seen as impermissible), out of which he has to cover his expenses.83 The relatively small amounts of investment profits in general takaful make this pure mudaraba model practically useless.84 The mudaraba model is often criticized for not being shari'a compliant. For example, contributions are supposed to be donations, yet serve as mudaraba capital.85 Also, in a mudaraba the invested capital is to be returned along with the profits – if any – whereas in takaful contributions are donations.86 Moreover, the provision of qard hasan is in conflict with the profit-and-loss-sharing idea of mudaraba.87

3. Wakala-Mudaraba Model

The blended *wakala-mudaraba* model combines both models. The *takaful* operator acts as *wakil* with respect to the underwriting business and as *mudarib* with respect to the investment business.[88] This way he may be remunerated for the underwriting business as a *wakil* (i.e. primarily on a fixed-fee basis) and – as a *mudarib* – also entitled to participate in the investment profits.[89] The issues mentioned above for the *wakala* and the *mudaraba* model apply here as well.

4. Conclusion

As was shown, through a largely uncoordinated process, driven by socio-economic and political factors, *takaful* developed as pragmatic way to enable an Islamic form of insurance on the basis of a rather legalistic approach. The *wakala-mudaraba* model is the model proposed by the Accounting Organization for Islamic Financial Institutions ("AAOIFI"), as will be shown the preeminent international standard setting body for Islamic Finance. Unlike in its beginnings, today Islamic Finance develops within an institutional landscape with centralized standard setting bodies like AAOIFI producing non-binding standards. Will the current forms of Islamic Finance in general, and *takaful* in particular grow within this institutional landscape? To examine this question, the following explores the institutional mechanics of international Islamic Finance standardization, specifically to what extent such standards create hard-law-like compliance effects.

83 NETHERCROTT/EISENBERG, *supra* n. 28, at 287.
84 ARCHER/KARIM/NIENHAUS, *supra* n. 79, at 14.
85 AYUB, *supra* n. 70, at 426.
86 AYUB, *supra* n. 70, at 426.
87 AYUB, *supra* n. 70, at 426.
88 ARCHER/KARIM/NIENHAUS, *supra* n. 79, at 15.
89 NETHERCROTT/EISENBERG, *supra* n. 28, at 285-286.

V. Prospects for Growth Through Harmonization

Today, Islamic finance is a global industry of approximately US$ 2 trillion, of which t*akaful* is a relatively small part with only around US$ 26 billion.[90] A lack of standardization and regulatory harmonization is often seen as one of the key challenges to further growth of *takaful* and, indeed, Islamic finance as a whole.[91] As was shown in the first part of this paper, the current forms of *takaful* developed through an uncoordinated process driven by various factors, which were political and economical in nature, falling on the fertile ground of a formal, legalistic interpretative approach. Other approaches had been, and still are, around, but they are not "mainstream".[92] Today, further growth is expected to come with the internationalization of Islamic Finance through standard setting. For that purpose international bodies have been set up, such as AAOIFI. Looking at AAOIFI's organizational design and norms may help understanding to what extent its standards may be seen, and are effective, as soft-law tools for international harmonization and further growth

1. Islamic Standard Setters vs. Conventional Standard Setters

While those standard setting bodies resemble their conventional counterparts (since they all work towards coordinating their different legal frameworks)[93] they differ with respect to the nature of their coordination process: Islamic finance and its regulation involves an additional layer of coordination: the coordination of Islamic law and secular law.

The coordination process of international standard setting bodies in Islamic finance can be described as a two level process. On a first level the central question of what is *shari'a* compliant must be answered.[94] This first level coordination may be international (meaning it might be answered by a group of scholars of different nationalities), but it needs to be thought of as a separate level of coordination, because it is not political, i.e. beyond a "wordly give and take". The coordination of Islamic law and modern finance requires interpreting Islamic law, which is primarily a process of discovery, and applying it to

[90] See for example http://www.mifc.com/index.php?ch=28&pg=72&ac=106&bb=uploadpdf, last accessed 29 November 2015.

[91] As a recent example please see Standard & Poor's 2016 Industry Outlook for 2016 available at: https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1466521&SctArtId=347908&from=CM&nsl_code=LIME&sourceObjectId=9373552&sourceRevId=1&fee_ind=N&exp_date=20251018-15:03:29&sp_mid=60153&sp_rid=33734 (last accessed 27 November 2015).

[92] See above (III.).

[93] While Drezner refers to regulatory coordination as a codified adjustment of national standards in order to recognize or accommodate regulatory frameworks from other countries (DREZNER DANIEL, *All Politics Is Gobal: Explaining International Regulatory Regimes*, Princeton 2007, at 11), coordination is referred to in a broader sense here in that it refers to processes which aim at eliminating contradictions of different rule-based frameworks rule-based frameworks.

[94] According to Bälz developments in Islamic financing transactions must be integrated with and adapted to the overall legal and regulatory framework of the prospective jurisdiction in which the transactions will take place, and also with the needs of the respective Muslim communities they serve (see BÄLZ KILIAN RUDOLF, Islamic Finance for European Muslims: The Diversity Management of Shari'ah-Compliant Transactions, Chicago Journal of International Law, Vol. 2 No. 2 Art. 11, available at: http://chicagounbound.uchicago.edu/cjil/vol7/iss2/11, last accessed 29 November 2015. Bälz argues that regarding first level coordination (i.e. the question of what is *shari'a* compliant) the specificities of local Muslim communities must be taken into account especially for retail transactions (as opposed to „big ticket"-transactions which are subject to global standards such as those issued by AAOIFI). This paper does not deal with such local specificities and their implications for the standardization of Islamic finance.

conventional finance. Islamic scholars apply their efforts at discovering the right answer based on the sources and methodologies of Islamic law. In that sense it is a rather technocratic process, not a political one in which the ideal result would be defined by a maximum amount of economic and power benefits. It is the second level of coordination where national or international legal frameworks must be coordinated with Islamic law – as discovered on the first level. This second level process is inherently political as it involves choices of the "rulers".[95]

2. AAOIFI

The main international body engaging in standard setting is Islamic Finance AAOIFI.[96] AAOIFI is based in Manama, comprises around 200 member bodies from 40 countries, including central banks and Islamic financial institutions.[97] Its standards have, according to AAOIFI, been adopted in the Kingdom of Bahrain, Dubai International Financial Centre, Jordan, Lebanon, Qatar, Sudan and Syria.[98] Regulators in Australia, Indonesia, Malaysia, Pakistan, Kingdom of Saudi Arabia, and South Africa have issued guidelines based on AAOIFI's standards and pronouncements.[99]

The forum for the first level coordination is AAOIFI's a *Shari'a* Board. Specifically, the *Shari'a* Board's function is (1) to achieve harmonization and convergence in the concepts and application among the *Shari'a* supervisory boards of Islamic financial institutions, to avoid contradiction or inconsistency between the *fatawa* and applications by these institutions, (2) providing a pro-active role for the *Shari'a* supervisory boards of Islamic financial institutions and central banks, (3) preparing and adopting of *Shari'a* standard and *Shari'a* rules for investment, financing and insurance instruments, and financial services and the interpretation thereof, (3) helping to develop *Shari'a* approved instruments, thereby enabling Islamic financial institutions to cope with the developments taking place in instruments and formulas in fields of finance, investment and other banking services, (4) examining any inquiries referred to the *Shari'a* Board from Islamic financial institutions or from their *Shari'a* supervisory boards, either to give the *Shari'a* opinion in matters requiring collective *Ijtihad* (reasoning), or to settle divergent points of view, or to act as an arbitrator, (4)reviewing the accounting, auditing, governance and ethical standards and related statements which AAOIFI shall issue throughout the various stages of the due process, to ensure that these issues are in conformity with the Islamic *Shari'a* rules and principles.

[95] Warde describes national interest considerations as including domestic factors and national circumstances among which he mentions indigenous forms of Islam (see WARDE, *supra* n. 4, at 85-86). Here Warde describes the various aspects which inform countries' political decisions regarding the design of their legal frameworks for Islamic institutions. This does not contradict the distinction between a technocratic process of discovering what is *shari'a* compliant and a political process of integrating such discoveries into national or international law.

[96] Other organizations include for example the International Islamic Rating Agency (IIRA), the Islamic Financial Services Board (IFSB) and the International Islamic Liquidity Management Corporation (IILM).

[97] See http://www.aaoifi.com/en/about-aaoifi/about-aaoifi.html, last accessed 29 November 2015.

[98] See http://www.aaoifi.com/en/about-aaoifi/about-aaoifi.html, last accessed 29 November 2015.

[99] See http://www.aaoifi.com/en/about-aaoifi/about-aaoifi.html, last accessed 29 November 2015.

The Shari'a Board is appointed by AAOIFI's members (through the Board of Trustees,[100] which is appointed by the General Assembly,[101] the primary forum for all members).[102] The *Shari'a* Board is composed of up to 21 members, who are appointed for a four-year term from among *Fiqh* scholars including those from member financial institutions and member regulators.[103] Neither the Board of Trustees nor any of its sub-committees may interfere directly or indirectly with the work of the *Shari'a* Board or direct it in any manner.[104] While the members of the *Shari'a* Board are appointed by the Board of Trustees, which is itself appointed by the General Assembly, i.e. by the members, this power to appoint appears to create little influence on the *Shari'a* Boards work, which is (supposed to be) free of any influence by the members, and which is provided free of charge.[105] Based upon this organizational design the interpretative processes of AAOIFI are designed as technocratic processes allocated to an expert body, which operates free of direct political influence.

To coordinate Islamic law, i.e. the sphere of the jurists, and the state law, i.e. the sphere of the ruler, a doctrine was developed during the Umayyad dynasty according to which the rulers' sphere of administrative law (*siyasa shari'a*) was restricted by the limits of Islamic law, i.e. it was not allowed to contradict Islamic law.[106] The task of interpreting Islamic law, and thereby marking the limits of the rulers' sphere of administrative law (*siyasa shari'a*) was with the Islamic jurists.

On a national level, todays' second level coordination finds an expression in constitutions of modern states with Muslim majorities.[107] Various constitutions describe the *shari'a* either as *a* source of law or *the* source of law, Saudi Arabia declares it the constitution of the state.[108] In practice coordinating Islamic law and national law proves to be difficult (not

[100] Article 37/1 of AAOIFI's statute, see http://www.aaoifi.com/en/about-aaoifi/governance-accountability/aaoifi-statute.html, last accessed 29 November 2015.

[101] The General Assembly is the primary forum for all members, although not all members are granted voting rights. There are five kinds of members: founding members, associate members, observer members, supporting members and members representing regulatory and supervisory authorities (that supervise Islamic financial institutions). Founding members, associate members and members representing regulatory and supervisory authorities enjoy a right to vote on matters within the General Assembly's responsibilities (Article 3 of AAOIFI's statute, see http://www.aaoifi.com/en/about-aaoifi/governance-accountability/aaoifi-statute.html, last accessed 29 November 2015).

[102] Not all members have voting rights. The number of voting rights per member depends on the "membership fee or the multiple thereof, but shall not exceed twenty votes", Article 10/3 of AAOIFI's statute, see http://www.aaoifi.com/en/about-aaoifi/governance-accountability/aaoifi-statute.html, last accessed 29 November 2015.

[103] Article 37/1 of AAOIFI's statute, see http://www.aaoifi.com/en/about-aaoifi/governance-accountability/aaoifi-statute.html, last accessed 29 November 2015.

[104] Article 18/2 of AAOIFI's statute, see http://www.aaoifi.com/en/about-aaoifi/governance-accountability/aaoifi-statute.html, last accessed 27 November 2015.

[105] Article 42 and 32 of AAOIFI's statute, see http://www.aaoifi.com/en/about-aaoifi/governance-accountability/aaoifi-statute.html, last accessed on 27 November 2015.

[106] SCHACHT, *supra* n. 22, at 53. Schacht ties the development of this doctrine to a saying of the Umayyad caliph 'Abd al-'Aziz: „No one has the right to personal opinion (*ra'y*) on points settled in the Koran; the personal opinion of the caliphs concerns those points on which there is no revelation in the Koran and no valid *sunna* from the Prophet after ours, and no holy book after ours, what Allah has allowed or forbidden through our Prophet remains so forever; I am not one who decides but only one who carries out, not an innovator but a follower."

[107] Of course, this is not the case for all countries with Muslim majorities (see footnote 76 in RABB INTISAR A., 'We the Jurists': Islamic Constitutionalism in Iraq, University of Pennsylvania Journal of Constitutional Law, Vol. 10 (2008), No. 3, 572, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1263354, last accessed 29 November 2015).

[108] For example Iraq's constitution designates Islamic law as a source of law (Ibid.); Islamic Law shalle be a main source of legislation in Kuwait (Art. 2 constitution of Kuwait, available at:

only) in the realm of finance. Sovereign wealth funds are an example. Huge amounts of capital belong to sovereign wealth funds of Muslim majority countries.[109] Yet, most of those sovereign wealth funds tend to invest conventionally as opposed to Islamically.[110] The tensions between the investment requirements and such countries' self-image as expressed, for example, in their constitutional choices, are eased by on the one hand utilizing exemptions embedded in Islamic law and on the other hand by promoting the growth of the Islamic Finance industry through institutions such as AAOIFI.

On an international level, the organisation's existence expresses the members' intention to afford practical relevance to the norms issued by AAOIFI. Such relevance requires some form of application of the standards and guidelines. The question, however, remains how and to what extent the members create effective links to authority, e.g. regulators formally recognize or even implement – depending on the domestic legal powers of the regulator – the standards.

AAOIFI's articles of association do not impose subordination or any formal obligation of any member to conform to its standards on their members. Bahrain chose to subordinate Islamic financial institutions to AAOIFI's standards by introducing a dynamic reference to those standards in its national law, but this is a *national* exception and not required by AAOIFI's founding documents. Absent any formal obligations, level two coordination can only work informally, i.e. through soft law mechanisms. Such soft law mechanisms dominate the realm of conventional financial regulation.

Brummer suggests concentrating on three central actors of soft law in the field of financial regulation. Those actors are national financial authorities, international standards and agenda setters, and international financial institutions.[111] According to Brummer, international agenda setters, are institutions that are geared towards large organizations

https://www.constituteproject.org/constitution/Kuwait_1992.pdf, last accessed 29 November 2015); "Shari'a law shall be a main source" of legislation in Qatar (see Article 1 of the constitution of Qatar, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125870.pdf, last accessed 29 November 2015), "The Islamic Shari'ah shall be principle source of [sic.] legislation" in the United Arab Emirates (see Article 7 of the constitution of the United Arab Emirates, available at: https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf, last accessed 29 November 2015); "The principles of Islamic Sharia are the principle source of legislation" in Egypt (Article 2 of the constitution of Egypt, available at: https://www.constituteproject.org/constitution/Egypt_2014.pdf?lang=en, last accessed 29 November 2015); Nationally enacted legislation having effect only in respect of the Northern states of the Sudan shall have as its sources of legislation Islamic Sharia and the consensus of the people" in Sudan (Article 5 of the constitution of Sudan, available at: https://www.constituteproject.org/constitution/Sudan_2005.pdf?lang=en, last accessed 29 November 2015).

[109] According to numbers of the Sovereign Wealth Institute the following sovereign wealth funds are believed to hold the following assets under management (in billions): The Abu Dhabi Investment Authority (ADIA) around US$ 773; SAMA Foreign Holdings (Saudi Arabia) around US$ 671.8; Qatar Investment Authority around US$ 256.

[110] Sovereign wealth funds' investments in conventional financial institutions may serve as an example, such as Qatar Investment Authority's investment of around CHF 6 billion in Credit Suisse in 2011, Kuwait Investment Authority's investment of around US$ 800 million in Agricultural Bank of China in 2010, Mubadala Investment Company's (United Arab Emirates – Abu Dhabi) investment in Engine Financing Air Berlin of around US$ 100 million in 2010, Oman State General Reserve Fund's investment in Petrovietnam Insurance Co PVI.HN, of around US$ 42.3 million in 2010, Qatar Investment Authority's investment in Barclays PLC of around US$ 2.9 billion in 2008, Qatar Investment Authority's investment of around US$ 140 million in Deutsche Bank in 2013 (data obtained from SovereignNet, The Fletcher Network for Sovereign Wealth and Global Capital of the Fletcher's Institute for Business in the Global Context).

[111] BRUMMER CHRIS, *How International Financial Law Works (and How It Doesn't),* Georgetown Law Journal, Vol. 99 (2011), 275, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542829, last accessed 29 November 2015.

with broad and diverse memberships that define broad strategic objectives for the international system, such as the G-20 or the Financial Stability Board[112].[113] They issue broad recommendations and principles,[114] to be further developed by so called-standard setting organizations.[115] National financial authorities (either universal regulators or specialists) are involved in the creation of international financial regulation, most often as executive bodies within their domestic setting. Depending on their domestic market and resource base they can vary to a large degree in their capabilities, i.e. human and other resources as well as their mandate within which they operate. Besides standard-setting bodies and national financial authorities there are international institutions such as the International Monetary Fund and the World Bank tasked with monitoring the international financial system as well as individual countries through a Financial Sector Assessment Program ("**FSAP**"), which includes a comprehensive and in-depth analysis of a country's financial sector.[116]

According to Brummer those key actors interact against the background of three coercive forces: market discipline, reputational constraints and institutional sanctions.[117] From his analysis Brummer concludes that while being soft law international financial regulation shows hard-law-like characteristics.[118] Applying Brummer's framework may help to learn more about the effectiveness of AAOIFI's standards as well as its potential as a driver for further standardization, particularly with a view to *takaful*.

A forensic assessment of whether Brummer's three coercive forces, i.e. market disciplines for firms, reputational constraints for regulators, and institutional sanctions, influence the three actors' behaviour in in the sphere of Islamic Finance, would require a more rigorous and quantitative analysis than this paper can provide. There is, however, value in applying the logic of Brummer's framework (perhaps as a basis for forensic examination).

a) Market Discipline and Reputational Constraints

Generally, market participants react to how other market participants comply or defect from regulatory soft law.[119] In efficient markets firms will be rewarded for complying with practices that are viewed by investors as contributing to profitability.[120] Shareholders, potential counterparties to financial transactions, as well as analysts will likely have more faith in well-regulated companies, contributing to higher valuations of those firms.[121] AAOIFI's *shari'a* standards and *fatawas* are widely accepted as market standard. They create a strong and internationally recognized label which is important for products,

[112] The FSB is an international body that monitors and issues recommendations about the global financial system. The FSB aims at promoting international financial stability by coordinating national financial authorities and international standard-setting bodies (see http://www.financialstabilityboard.org/about/, last accessed 29 November 2015).
[113] BRUMMER, *supra* n. 111, at 275.
[114] BRUMMER, *supra* n. 111, at 277.
[115] BRUMMER, *supra* n. 111, at 277.
[116] See http://www.imf.org/external/np/fsap/fssa.aspx, last accessed 29 November 2015.
[117] BRUMMER, *supra* n. 111, at 284-290.
[118] BRUMMER, *supra* n. 111, at 262.
[119] BRUMMER, *supra* n. 111, at 287.
[120] BRUMMER, *supra* n. 111, at 287.
[121] BRUMMER, *supra* n. 111, at 288.

whose key differentiator (vis-à-vis conventional products) is being Islamic.[122] Creating an alternative, globally accepted label would require high costs and face a significant risk of failure, since part of the legitimacy of the existing standards derives from the organizations' broad and inclusive membership and the sharing of resources – all of which is difficult to replicate. There is also a compliance pull towards accepting those standards, because the more market participants comply, the more the value of compliance increases.

The reputation of a national regulator depends on its capability - as perceived by other regulators and market participants – and its exposure. The high degree of technical capacity required for dealing with Islamic finance institutions,[123] and the resulting scarcity of human resources require substantial investments from national regulators to provide state-of-the-art regulation and supervision. A regulator's exposure depends on the degree of regulatory coordination and communication with market participants (through regulations, instructions, or regulatory advice). Mutual recognition schemes are a case in point. Regulators often rely on one another with respect to informational exchange and expect compliance. Where those expectations are frustrated the compliant party will rethink and re-evaluate its expectations and adjust accordingly.[124] Reputational benefits for regulators complying with AAOIFI standards might play a role, but this seems to be difficult to ascertain. Perhaps one aspect that promotes regulatory participation is that regulators' reputation depends on their capability - as perceived by other regulators and market participants. Capability is a specific challenge in the context of Islamic finance regulation as expertise in Islamic law already an immensely deep and broad expertise. In combination with expertise in finance and economics, i.e. the expertise conventional financial regulation requires apart from politics, capable persons are a scarce resource. The "capacity-challenge" and the increasing exposure regulators face in dealing with a growing and increasingly international industry likely leads regulators to embrace international standards.

Based on the foregoing, the applicability of market discipline and reputational benefits appear to be quite plausible with respect to AAOIFI's standards. However, in practice there is non-compliance even by major members of AAOIFI. Saudi Arabia, deviates with respect to the distribution of the insurance surplus. While the AAOIFI standard requires that such surplus belongs to the policyholders,[125] Saudi Arabian law requires that at least 90 % is transferred to the income statement of the *takaful* operator's shareholders, and only 10 % of the net surplus belongs to the policyholders.[126] It important to note that Saudi

[122] The IFSB calls it the raison d'être of *takaful* (see IFSB Standard 8, p. 3, no. 11, available at: http://www.ifsb.org/standard/ED8Takaful%20Governance%20Standard.pdf, last accessed 29 November 2015).

[123] Mohammed Shafique provides a brief overview of which skills are rare and what kinds of efforts are under way to reduce the shortage of human resources (see ANWAR HABIBA/MILLAR RODERICK, *Islamic Finance: A Guide for International Business and Investment,* GMB Publishing, at 143).

[124] BRUMMER, *supra* n. 111, at 286.

[125] AAOIFI Shari'a Standard No. 26, Section 12.

[126] See page 2 of the Surplus Distribution Policy of Saudi Arabian Monetary Agency (SAMA), available at: http://www.sama.gov.sa/en-US/Laws/InsuranceRulesAndRegulations/IIR_Surplus_Distribution_Policy.pdf, last accessed 29 November 2015, and Article 70 lit. e of the Implementing Regulations of the Law on Supervision of Cooperative insurance Companies promulgated by Royal Decree No. (M/32) dated 2.6.1424 H, available at: http://www.sama.gov.sa/enUS/Laws/InsuranceRulesAndRegulations/IIR_4600_C_ReguExecutive_En_2005_08_18_V1.pdf, last accessed 29 November 2015.

Arabia is the world's largest market for *takaful*, [127] and is expected to continue growing.[128] Considering the economic importance and leading role in AAOIFI as well as the countries' self-perception as guardian of the holy places[129], Saudi Arabia is a "price-maker rather than a price-taker"[130] in the realm of Islamic finance and *takaful* in particular. Against that background the country may be less motivated to exercise discipline regarding AAOIFI's standards.

b). Institutional Sanctions

Institutional sanctions may, according to Brummer, support the effectiveness of soft law.[131] Such institutional sanctions could be imposed by international organizations such as the World Bank and the IMF. They are, for example, both members of the International Association of Insurance Supervisors ("**IAIS**"). While the IAIS itself does not impose any sanctions for non-compliance of its members with its standards and principles, the World Bank and the IMF impose conditionality considerations on their loans,[132] and monitor their borrowers through a Financial Sector Assessment Program ("**FSAP**"). The FSAP includes a comprehensive and in-depth analysis of a country's financial sector,[133] including compliance with the IAIS. The results of the FSAP analysis are summarized and published in Reports on Observance of Standards and Codes ("**ROSCs**").[134] The ROSCs intend to identify developmental and technical assistance needs, identify risks, and help prioritize national policy objectives.[135] ROCS are voluntary, which leads Brummer to comment that only the best performers are participating.[136] However, their absence may already be seen as a signal of defection, according to Drezner.[137]

[127] Ernst & Young, Global Takaful Insights 2014, 3, available at: http://www.ey.com/Publication/vwLUAssets/EY_Global_Takaful_Insights_2014/$FILE/EY-global-takaful-insights-2014.pdf, last accessed 29 November 2015.

[128] Ernst & Young, Global Takaful Insights 2014, 6 - 7, available at: http://www.ey.com/Publication/vwLUAssets/EY_Global_Takaful_Insights_2014/$FILE/EY-global-takaful-insights-2014.pdf, last accessed 29 November 2015. A relatively low insurance penetration rate of (according to the Saudi Arabia Monetary Agency) below 1 % in 2013 and just slightly above 1 % in 2014 (see http://www.sama.gov.sa/sites/samaen/Insurance/InssuranceLib/Sur_KSA%20Market%20Report_2013_English-vf.pdf, last accessed 29 November 2015, p. 7) indicates growth potential.

[129] See for example: https://saudiembassy.net/about/country-information/Islam/guardian_of_the_Holy_Places.aspx, last accessed 29 November 2015; according to Al-Yahia and Fustier it is a key foreign policy priority of Saudi Arabia to fulfill and maintain its role as leader of the Islamic world, see: AL YAHYA KHALID/FUSTIER NATHALIE, Saudi Arabia as a Humanitarian Donor: High Potential, Little Institutionalization, available at: http://www.gppi.net/fileadmin/user_upload/media/pub/2011/al-yahya-fustier_2011_saudi-arabia-as-humanitarian-donor_gppi.pdf, last accessed 29 November 2015).

[130] This expression is borrowed from Drezner, who used it to describe the relative power of great powers (DREZNER, *supra* n. 93, at 34).

[131] BRUMMER, *supra* n. 111, at 289.

[132] Brummer refers to the conditionality of the IMF and the World Bank as the lenders of last resort and sources of developmental assistance (BRUMMER, *supra* n. 111, at 289).

[133] See http://www.imf.org/external/np/fsap/fssa.aspx, last accessed 29 November 2015.

[134] BRUMMER, *supra* n. 111, at 291.

[135] The Financial Sector Assessment Program (FSAP) is a comprehensive and in-depth analysis of a country's financial sector, the results of which may be summarized and published in ROSC (see BRUMMER, *supra* n. 111, at 280-281) and for more detail: https://www.imf.org/external/NP/fsap/fsap.aspx, last accessed 29 November 2015).

[136] BRUMMER, *supra* n. 111, at 291.

[137] DREZNER, supra n. 93, at 141.

AAOIFI does not sanction non-compliance of its members with its standards. Yet, on the national level some countries have integrated the AAOIFI standards into domestic law in one way or another. For example in Bahrain, where the Central Bank acts as national regulator for financial services, rendering Islamic insurance services requires compliance with the principles of the *shari'a*. To ensure such compliance a *shari'a* board must be established, and the AAOIFI standards must be adhered to. Also, in Malaysia, where the central insurance regulator is located within the central bank, a *shari'a* board must be established and the standards of the AAOIFI must be implemented. Such direct and dynamic references incorporate international financial regulations into national law, elevating international soft law to national hard law. Such dynamic referral is remarkable as it concedes considerable authority to AAOIFI, albeit on a national level only.

On the international level, however, International Islamic Finance Regulation lacks the institutional embeddedness of its conventional counterparts.

Islamic finance related codes and standards are currently not subject of such ROSCs. On November 11, 2015 Christine Lagarde, Managing Director of the IMF issued a statement at the conclusion of her visit to Kuwait saying "Going forward, we will be working towards taking an institutional view on better integrating Islamic finance into out surveillance work".[138] The IMF already takes into account "the implications of Islamic finance for those members where it has been relevant, in the context of (...) its Financial Sector Assessment Program (FSAP) assessments"[139]. However, such integration appears to relate to prudential regulation rather than extending to level two coordination within the meaning of this paper. The Islamic Development Bank, whose purpose is "to foster the economic development and social progress of member countries and Muslim communities individually as well as jointly in accordance with the principles of *shari'a* i.e., Islamic Law",[140] refrains from interfering with the political choices of the countries it finances.[141] It offers its Islamic products, but does not attach political conditions in order to influence a countries' policies. Theoretically, the Islamic Development Bank could demand compliance with international Islamic standards such as the AAOIFI standards as a prerequisite for eligibility. It could, for example, make any support subject to a certain form of level two coordination, i.e. some degree of integration of AAOIFI's standards into the recipient country's national legal framework. The IDB does, however, not pursue such a conditionality approach. With respect to level two coordination external institutional sanctions for non-compliance with international Islamic finance regulation does not exist.

[138] IMF Press Release No. 15/512, available at: http://www.imf.org/external/np/sec/pr/2015/pr15512.htm, last accessed 29 November 2015.

[139] KAMMER ALFRED/NORAT MOHAMED MARCO PIÑÓN/ANANTHAKRISHNAN PRASAD/TOWE CHRISTOPHER/ZEINE ZEIDANE, AND AN IMF STAFF TEAM, *Islamic Finance: Opportunities, Challenges, and Policy Options,* IMF Staff Discussion Note April 2015, available at: http://www.imf.org/external/pubs/ft/sdn/2015/sdn1505.pdf, last accessed 29 November 2015.

[140] http://www.isdb.org/irj/portal/anonymous?NavigationTarget=navurl://24de0d5f10da906da85e96ac356b7af0, last accessed 29 November 2015.

[141] The financings made available by the IDB are *shari'a* compliant, but the IDB does not attach policy conditions to its financings like the IMF and WB do. For a more general observation including the IDB see for example Neumayer, who states that Arab aid money usually comes untied, but he seems to refer primarily to economic conditions such as restrictions on what kind of goods may be purchased (NEUMAYER ERIC, *What Factors Determine the Allocation of Aid by Arab Countries and Multilateral Agencies,* The Journal of Development Studies 39, No. 4, 2003, available at: http://eprints.lse.ac.uk/615/1/JournalofDevelopmentStudies_39%284%29.pdf, last accessed 29 November 2015.

VI. Conclusion

Islamic Finance shifted from its socio-economic beginnings to a rather legalistic approach underlying today's global industry. Whether the current forms will continue to lead the way for further expansion and growth could depend on the institutional framework within which the industry operates. Part one explained the diverse and pluralistic nature of Islamic law and its interpretation. Against that background AAOIFI as an international body with broad multinational membership from the private and public sector, and a single *shari'a* board assessing the *shari'a* compliance of financial instruments and transactions is a quite remarkable achievement in itself. But how effective are its norms with regard to *takaful*?

AAOIFI generates a market standard and serves as a benchmark for corporate *shari'a* boards as well as for national regulators. However, it appears to be important to also note that AAOIFI should be understood as a technocratic forum rather than international effort to produce international law. AAOIFI's main function is bundling resources and exchanging knowledge and experience. Several reasons justify that description: first, AAOIFI itself does not impose sanctions for non-compliance with its standards; second, AAOIFI's standards are not embedded in other international institutions processes which could impose (direct or indirect) sanctions for non-compliance. To what extent there may be coercive forces at play, such as market discipline, remains to be examined in detail. Yet, in practice there is non-compliance even by major members of AAOIFI. Saudi Arabia, for example, deviates with respect to the insurance surplus. While AAOIFI standard requires that such surplus belongs to the policyholders,[142] Saudi Arabian law requires that at least 90 % is transferred to the income statement of the *takaful* operator's shareholders, and only 10 % of the net surplus belongs to the policyholders.[143] Such deviation is not a Saudi Arabia is the world's largest market for *takaful*, [144] and is expected to continue growing.[145] In 2014 the global estimation is US$ 14 billion, 48 % of which are believed to be the Saudi Arabia's share.[146] Considering the economic importance and leading role in AAOIFI as

[142] AAOIFI Shari'a Standard No. 26, Section 12.

[143] See page 2 of the Surplus Distribution Policy of Saudi Arabian Monetary Agency (SAMA), available at: http://www.sama.gov.sa/en-US/Laws/InsuranceRulesAndRegulations/IIR_Surplus_Distribution_Policy.pdf, last accessed 29 November 2015, and Article 70 lit. e of the Implementing Regulations of the Law on Supervision of Cooperative insurance Companies promulgated by Royal Decree No. (M/32) dated 2.6.1424 H, available at: http://www.sama.gov.sa/enUS/Laws/InsuranceRulesAndRegulations/IIR_4600_C_ReguExecutive_En_2005_08_18_V1.pdf, last accessed 29 November 2015.

[144] Ernst & Young, Global Takaful Insights 2014, 3, available at: http://www.ey.com/Publication/vwLUAssets/EY_Global_Takaful_Insights_2014/$FILE/EY-global-takaful-insights-2014.pdf, last accessed 29 November 2015.

[145] Ernst & Young, Global Takaful Insights 2014, 6-7, available at: http://www.ey.com/Publication/vwLUAssets/EY_Global_Takaful_Insights_2014/$FILE/EY-global-takaful-insights-2014.pdf, last accessed 29 November 2015. A relatively low insurance penetration rate of (according to the Saudi Arabia Monetary Agency) below 1 % in 2013 and just slightly above 1 % in 2014 (see http://www.sama.gov.sa/sites/samaen/Insurance/InssuranceLib/Sur_KSA%20Market%20Report_2013_English-vf.pdf, last accessed 29 November 2015, p. 7) indicates growth potential.

[146] Ernst & Young, Global Takaful Insights 2014, 6 - 7, available at: http://www.ey.com/Publication/vwLUAssets/EY_Global_Takaful_Insights_2014/$FILE/EY-global-takaful-insights-2014.pdf, last accessed 29 November 2015. Other estimations indicate a slightly higher percentage (see http://www.islamicfinance.com/2015/01/takaful/, last accessed 29 November 2015).

well as the countries' self-perception as guardian of the holy places[147], Saudi Arabia is a "price-maker rather than a price-taker"[148] in the realm of Islamic finance and *takaful* in particular. Against that background the country may be less motivated to exercise discipline regarding AAOIFI's standards. Considering those aspects, it should be prudent to state that AAOIFI is indeed a conduit for soft law, albeit with limited effectiveness. Therefore, the potential for further growth through standardization seems to be limited. If Islamic Finance is to continue growing it may rather be driven by national programs or the demand side, perhaps in the form of a more socio-economically oriented approach (in some ways perhaps not so different from the general trend towards social and ethical finance). Examining the potential for growth through such approach e.g. though social impact funds remains to be examined in a different paper.

[147] See for example: https://saudiembassy.net/about/country-information/Islam/guardian_of_the_Holy_Places.aspx, last accessed 29 November 2015; according to Al-Yahia and Fustier it is a key foreign policy priority of Saudi Arabia to fulfill and maintain its role as leader of the Islamic world, see: AL YAHYA KHALID/FUSTIER NATHALIE, *Saudi Arabia as a Humanitarian Donor: High Potential, Little Institutionalization,* available at: http://www.gppi.net/fileadmin/user_upload/media/pub/2011/al-yahya-fustier_2011_saudi-arabia-as-humanitarian-donor_gppi.pdf, last accessed 29 November 2015).

[148] This expression is borrowed from DREZNER, who used it to describe the relative power of great powers (DREZNER, *supra* n. 93, at 34).

Appendix 1

In the name of God, the Merciful, the Compassionate

The Kingdom of Saudi Arabia

Department of Research, Iftaa and Guidance

Secretariat General of the Supreme Council of the Senior Ulama

Resolution No. 51 dated 4th Rabi Thani 1397 Hejra [corresponding to 23rd March 1977 Gregorian]

Praise be to God and prayers and peace be upon the last Prophet.

At its tenth session held in Riyadh in Rabi Awal 1397 the Supreme Council of the Senior Ulama has looked into the documents prepared by the group of experts concerning a possible alternative to commercial insurance, so as to achieve the Islamic Law goal of cooperation, for which it has been created, and its validity as a lawful alternative to commercial insurance in all its forms.

After hearing all relevant facts, discussions and deliberations, the council, with the exception of the learned Sheikh Abdullah Bin Manei, decided that cooperative insurance is permissible and that it is possible to adopt it instead of commercial insurance, in order that the nation [of Islam] can achieve cooperation according to Islamic Law, for the following reasons:

> 1st: Cooperative insurance is a form of contract of donation, which means the distribution of risks and anticipation of sharing the responsibility in case of disasters. This is based on the fact that people contribute in cash to compensate those who sustain damage. In doing so, the cooperative insurance group does not aim to trade in, or make a profit from, the money of others. Its members only mean to distribute the risks among themselves and to cooperate in bearing the damage.
>
> 2nd: Cooperative insurance is free of usury in its two forms, *riba al fadul* and *riba al-nisa*. The contributors' contracts are not usurious, and they do not exploit the collected money in usurious transactions.
>
> 3rd: The fact that the contributors in cooperative insurance ignore to define the benefit they gain does not harm, because they are donors. Therefore, there are no risks or gambling, and it is different from commercial insurance which is a contract of commercial financial transactions.

4th: It is permissible that the contributors or their representatives may invest the collected money to achieve the goals for which this cooperation is created, whether is done generally or for a specified sum of money. The council, with the exception of the learned Sheikh Abdullah Bin Manei, agrees that the cooperative insurance can be in the form of a mixed cooperative insurance company for the following reasons:

First: To be obligated by the concept of Islamic economics, which leaves the responsibility for individual to carry out the different economic projects, and the role of the state, comes only as a complementary element, for what the individuals have failed to undertake, as directors and controllers, to guarantee the success of these projects and the correctness of their transactions.

Second: To be obligated by the concept of cooperative insurance, in which case the contributors shall autonomously govern the institution.

Third: Training the people in direct cooperative insurance, and inspire them to contribute positively. By such inspiration and through such contribution, self-awareness can be maintained, and this process will help lessen the risks and losses and develop success of the institution.

Fourth: The fact of its being a mixed company shall not depict it as a governmental donation or grant to the beneficiaries. The government only protects and supports. Positive relationship as it is, nevertheless, each party's responsibility remains firm.

The council, except the learned Sheikh Abdullah Bin Manei, requires that, in drafting the detailed provisions for the cooperative insurance, the following guidelines should be included:

First: The cooperative insurance organization shall have branches Kingdom-wide, in addition to its head office. The organization shall include departments for all kinds of risks covered by insurance, such as a department for health insurance, insurance against disability, senility, and-so-on. Or a department for peddlers, merchants, students, engineers, lawyers, physicians, and-so-on.

Second: The cooperative insurance organization shall be farsighted and not adopt complicated measures.

Third: The organization shall have a supreme board to set forth policies, regulations and resolutions, to be valid and binding as long as they are in accordance with Islamic Law.

Fourth: The government as well as the contributors shall be represented on this council. The supervision by the government shall guarantee against any possible mal-administration or fraud and ensure its safety.

Fifth: If the risks drain the institution's resources in a manner which necessitates the increase of its capital, the government shall shoulder this responsibility jointly with the contributors. The council, with the exception of the learned Sheikh Abdullah Bin Manei, resolved that a set of detailed articles shall be drafted by a group of experts specialized in this field, nominated by the government. After they finish this task, the articles shall be entrusted to the Supreme Council of the Senior Ulama to review them in accordance with Islamic Law. May God bless us all.

Supreme Council of the Senior Ulama

Chairman of the Tenth Session: Abdulaziz Bin Baz (stamped)

Abdul Razaq Afifi (signed)

Abdullah Bin Mohamed Bin Hameed (stamped)

Abdullah Khayat (signed)

Mohamed Al Harakan (stamped)

Salih Bin Uthaimeen (stamped)

Ibrahim Bin Mohamed Al Sheikh (signed)

Suliman Bin Abaid (signed)

Mohamed Bin Jubair (signed)

Abdullah Bin Alian (signed)

Rashid Bin ... (signed)

Abdullah Bin Ga'wood (signed)

Salih Bin Lihaidan (signed)

Abdullah Bin Minei (signed)

Appendix 2

Bismillah Arrahman Arrahim

Praise be to Allah, the Lord of the Universe, and Prayers and Blessings be upon

Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions

RESOLUTION N° 9 (9/2)

CONCERNING

INSURANCE AND REINSURANCE

The Council of the Islamic Fiqh Academy, during its second session, held

in Jeddah (Kingdom of Saudi Arabia), from 10 to 16 Rabiul Thani 1406 H (22-28 December 1985);

After having reviewed the presentations made by the participating scholars during the session on the subject of "Insurance and reinsurance"; And after discussing the same;

Having closely examined all the types and forms of insurance and having an indepth review of the basic principles upon which they are founded and their goal and objectives;

Having looked into what has been issued by the Fiqh Academies and other edifying institutions in this regard;

RESOLVES

First: The commercial insurance contract with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major elements of deceit, which void the contract and, therefore is prohibited (haram) according to *Shari'a*.

Second: The alternative contract, which conforms, to the principles of Islamic dealings is the contract of cooperative insurance, which is founded on the basis of charity and cooperation. Similarly, is the case of reinsurance based on the principle of cooperative insurance.

Third: The Academy invites the Islamic countries to work on establishing cooperative insurance institutions and cooperative entities for the reinsurance, in order to liberate the Islamic economy from exploitation and put an end to the violation of the system which Allah has chosen for this Ummah.

Verily, Allah is All-Knowing